



THE SECRETARY OF THE INTERIOR
WASHINGTON

DEC 30 2004

Memorandum

To: Deputy Secretary
Solicitor
Assistant Secretaries
Special Trustee for American Indians
Inspector General
Director, Bureau of Indian Affairs
Director, Bureau of Land Management
Director, Fish and Wildlife Service
Director, National Park Service
Commissioner, Bureau of Reclamation

From: Secretary *Gale A. Norton*

Subject: Policy Guidance Concerning Legislative Exchanges and Land Valuation Issues

Over the past year, the Department has taken significant steps to ensure that land transactions are conducted with integrity and earn public confidence. I am especially pleased with the implementation of our initiative to reform the management of real estate appraisals and by the formulation of Land Transaction Principles to guide our activities. In order to build on our progress, further actions are required as outlined in this memorandum and the attached policy guidance.

Last summer, I asked the Land Transaction Group (LTWG) to develop recommendations concerning land transactions such as exchanges that the Department initiates or negotiates which require Congressional ratification. In addition, the LTWG has been developing recommendations concerning significant issues related to the appraisal process. The attachment outlines policies that I am establishing for Department-wide implementation concerning: (a) alternative methods of valuation; (b) third party (*i.e.*, non-Federal) appraisals; and (c) legislative exchanges.

The policy on alternative methods of valuation addresses the need to comport with nationally applicable appraisal standards, noting that the use of methods other than or in addition to market value appraisals must be clearly described and differentiated from recognized market value appraisals. This is essential since these appraisal standards do not allow for applying such alternatives to determine market value.

The policy on the use of third party (*i.e.*, non-Federal) appraisals states that such an appraisal will not be accepted for review unless: the proponent has consulted with the Appraisal Services Directorate (National Business Center) regarding the project's scope of work and other key considerations; a senior agency or Departmental manager determines that the transaction it supports comports with applicable land management missions, priorities, and plans; and the appraisal is prepared by a certified appraiser in accordance with applicable professional appraisal standards. The appraisal must also undergo appropriate review by the Appraisal Services Directorate before it may be used to execute a transaction.

The policy on legislative exchanges reinforces existing Departmental guidance, but further provides for a Departmental determination on how to review such proposals internally to ensure appropriate coordination and decision making. It also underscores the importance of adhering to applicable appraisal standards in developing applicable legislative provisions.

I am directing you to disseminate this guidance to appropriate personnel including program and field managers as well as to outside parties, and to ensure its incorporation in pertinent bureau or office guidance documents.

Attachments

POLICY ON ALTERNATIVE METHODS OF VALUATION

Background

The market value of properties is determined through appraisals conducted pursuant to nationally recognized appraisal standards, specifically the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) or the Uniform Standards of Professional Appraisal Practice (USPAP). In recent years, some have asserted that non-market factors (e.g., scenery, wildlife habitat, and conserved open space) also deserve consideration when transactions are negotiated. Policy guidance is needed to clarify the distinction between market value appraisals and alternative methods of valuation (AMV) employed to assess non-market factors.

In recent years, AMV have been advanced by those who assert that common measures of market value are unduly limiting. AMV are often advocated by proponents of specific exchanges or acquisitions to support the application of a premium above a property's appraised value or, incorrectly, as a proxy for market value. This occurs most often in cases of land use conflicts involving government regulation, where AMV are suggested as a basis for negotiating solutions to decision-making impasses.

Appraisal standards state that in conducting analyses of market value, the highest and best use of a property to be appraised must be an economic use. Accordingly, non-market factors cannot be considered in such analyses. Nonetheless, bureaus and other parties to transactions may be tempted to apply AMV to appraisals, especially when it proves difficult to meet requirements mandating "equal value" exchanges (which generally apply to all Interior agencies) or when they encounter other obstacles in negotiations. This has resulted in appraisals that do not conform to recognized appraisal standards. There are instances in which Congress directs bureaus to analyze and consider non-market factors or other "public interest" considerations when completing a transaction, or in which the Department itself proposes to do so, as a means of resolving land-based conflicts and advancing a broader public policy. Regardless, when AMV are used, *they must be clearly distinguished from appraisals.*

Policy

1. All real property appraisals performed by the Department shall conform to nationally recognized appraisal standards (*i.e.*, the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, as applicable). Accordingly, the use of public interest value, contingent valuation, habitat equivalency analysis, and any other AMV in appraisals is expressly prohibited.
2. If Congress directs the Department to utilize AMV other than or in addition to an appraisal in a specific transaction, the Department shall (a) expressly describe the AMV applied; (b) using the assistance of the Appraisal Services Directorate (ASD), explain how the AMV differ from appraisal methods applied under UASFLA or USPAP; and (c) upon Congressional direction, provide this material to the appropriate committees prior to or after completion of the transaction, in accordance with such direction.

3. (a) If the Department proposes to utilize AMV other than or in addition to an appraisal in a specific transaction that requires Congressional authorization, the Department shall expressly describe to the appropriate committees of Congress the AMV applied and, using the assistance of the ASD, explain how they differ from appraisal methods applied under UASFLA or USPAP.

(b) If the Department proposes to utilize AMV other than or in addition to an appraisal in a specific transaction that does not require Congressional authorization, the Department shall notify the appropriate committees of Congress and the Office of the Inspector General prior to the completion of the transaction and, upon Congressional direction, explain, using the assistance of the ASD, to the appropriate committees how the AMV differ from appraisal methods applied under UASFLA or USPAP.
4. The Associate Director, ASD, has overall authority and responsibility to ensure the effective implementation of this policy, in coordination with the Office of the Special Trustee for American Indians (OST), as applicable, and the Office of Congressional and Legislative Affairs (OCL).

POLICY ON APPRAISALS PREPARED FOR THIRD PARTIES

Background

Appraisals prepared for third (*i.e.*, non-Federal) parties may assist in achieving conservation and land tenure adjustment objectives. This assistance may help provide mutually beneficial outcomes for the Department and its partners, including state and local agencies, private non-profit organizations, corporations, private entities, and individuals. Applicable partnership activities include land transactions such as exchanges and sales as well as full fee and less-than-fee purchases. The following policy provides direction regarding the use of third (*i.e.*, non-Federal) appraisals.

In many instances, the non-Federal party directly obtains an appraisal without any involvement from the pertinent bureau. Such third party appraisals have sometimes either been prepared by unqualified appraisers, failed to meet Federal appraisal standards, or insufficiently addressed all of the issues involved in the transaction. Substandard appraisals may seriously impact appraiser independence, undermine the integrity of transactions, and lead to antagonism between bureaus and proponents, especially when a transaction has significant external stakeholder support. Substandard appraisals ordered by non-Federal parties for a proposed transaction with the Department of the Interior have long been identified as a problem in reviews by the Office of Inspector General. The Department is now establishing a policy to ensure that its transactions are above reproach.

Policy

1. Appraisals prepared for third (*i.e.*, non-Federal) parties may assist in achieving mutually beneficial outcomes for the Department and the proponent. The Department of the Interior, however, is not obligated to review land transaction proposals supported by such appraisals that do not comport with its land management missions, priorities, and plans.
2. Upon bureau request, the Department, acting through the ASD or the OST, as applicable, shall review a third party appraisal if: (a) the third party consults with ASD or OST prior to the initiation of the appraisal on the scope of work and the selection of the appraiser, and agree that ASD or OST, as applicable, is both the client for and an intended user of the appraisal; (b) a senior bureau or Departmental manager (*i.e.*, Senior Executive Service level in the field or headquarters, as applicable) has transmitted the appraisal with a determination that the land transaction proposal supported by the appraisal comports with applicable missions, priorities, and plans; and (c) ASD or OST, as applicable, has determined that the appraisal was prepared by a certified appraiser and meets applicable appraisal standards.
3. ASD or OST review of an appraisal does not create an expectation that such appraisal will be approved.

4. In cases where an appraisal is reviewed by ASD or OST, a second appraisal may be required. If so, ASD or OST shall conduct or oversee that appraisal, which shall be performed in accordance with procedures determined by ASD or OST, as applicable.
5. The Associate Director, ASD, has overall authority and responsibility to ensure the implementation of this policy in coordination with OST, as applicable, and the OCL.

POLICY ON LEGISLATIVE EXCHANGES

Background

Legislative exchanges may resolve difficult land tenure adjustment issues, and thus provide beneficial outcomes to taxpayers, agencies, non-Federal units of government, and property owners affected by Federal activities. These exchanges, however, involve the Department in sensitive negotiations with potentially broad or precedent-setting implications. Accordingly, policy guidance is needed to clarify the roles and responsibilities of officials and employees.

Legislation is required to authorize land exchanges in two broad instances: (a) all interstate exchanges; and (b) exchanges directed by Congress which include provisions exempting agencies from one or more mandates that might otherwise apply, such as FLPMA land use planning requirements, NEPA, or requirements for appraisals. Additionally, a legislative exchange may be proposed even when no additional authority is required. Although most legislative exchanges address BLM lands, legislation has also been enacted concerning NPS and FWS lands.

Legislative exchanges are often proposed by Members of Congress without Departmental involvement in the development or drafting stages. In such cases, the Department's legislative review process is used to solicit internal comments and ultimately to recommend a Departmental or Administration position. In addition, the Departmental Manual (461 DM 1) requires bureaus or offices "receiving a request for information, drafting, or other assistance regarding the consideration or preparation of legislation, other than appropriations legislation, from sources outside the Department" to notify the Legislative Counsel. The Legislative Counsel is designated to work with the bureau or office to develop the draft legislation and ensure internal review prior to transmittal to Congress. In some cases, however, Interior involvement is as follows: (a) a Member of Congress requests a bureau to help draft an exchange proposal; or (b) bureaus draft exchange legislation on their own for discussion with a Member or Member's staff. These latter instances are addressed in the following policy.

Policy

1. All officials and employees of the Department must adhere to 461 DM 1, which addresses requests for information, drafting, or other assistance regarding legislation from sources outside the Department, and specifically requires coordination with the Office of Congressional and Legislative Affairs (OCL), acting through the Legislative Counsel.
2. Similar coordination with the OCL shall occur on legislative exchange proposals initiated by any entity, official, or employee of the Department.
3. OCL shall determine the appropriate means for the review of each legislative exchange proposal, including the involvement of appropriate policy officials of other offices (e.g., the Appraisal Services Directorate (ASD) of the National Business Center or the Office of the Special Trustee for American Indians, as applicable, and the Solicitor).

4. All legislative exchange proposals must be supported by appropriate documentation that supports key provisions.
5. All appraisals used in legislative exchanges shall conform to nationally recognized appraisal standards (*i.e.*, the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, as applicable). When the Department proposes the application of alternative methods of valuation other than or in addition to an appraisal for a legislative exchange, it shall expressly describe the alternative methods of valuation and explain how they differ from methods utilized in an appraisal consistent with nationally recognized appraisal standards (*i.e.*, the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, as applicable).
6. The Director, OCL, has overall authority and responsibility to ensure the effective implementation of this policy, in coordination with the Associate Director, ASD, as applicable.



THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO: 3258

Subject: Policy Guidance Concerning Land Valuation and Legislative Exchanges

Sec. 1 Purpose. This Order provides policy for land valuation issues, real property appraisals, and legislative land exchanges.

Sec. 2 Background. During the past year, the Department has taken significant steps to ensure that land transactions are conducted with integrity and earn public confidence. These steps include implementing reforms to improve the management of real property appraisals, establishing the Appraisal Services Directorate, and issuing the Land Transaction Principles. This Order provides the following: (a) a policy on alternative methods of valuation (AMV) that addresses the need to comport with nationally applicable appraisal standards; (b) a policy on appraisals prepared for third (*i.e.*, non-Federal) parties; and (c) a policy on legislative exchanges that reinforces existing Departmental guidance and further provides for a Departmental determination on how to review such proposals internally to ensure appropriate coordination and decision making. The legislative exchange policy also underscores the importance of adhering to applicable appraisal standards in developing applicable legislative provisions.

Sec. 3 Authority. The policy in this Order is being issued in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.

Sec. 4 Policy.

a. Alternative Methods of Valuation.

(1) All real property appraisals performed by the Department shall conform to nationally recognized appraisal standards (*i.e.*, the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, as applicable). Accordingly, the use of public interest value, contingent valuation, habitat equivalency analysis, and any other AMV in appraisals is expressly prohibited.

(2) If Congress directs the Department to utilize AMV other than or in addition to an appraisal in a specific transaction, the Department shall (a) expressly describe the AMV applied; (b) using the assistance of the Appraisal Services Directorate (ASD), explain how the AMV differ from appraisal methods applied under UASFLA or USPAP; and (c) upon Congressional direction, provide this material to the appropriate committees prior to or after completion of the transaction, in accordance with such direction.

(3) Requirement for Congressional Authorization or Notification.

(a) If the Department proposes to utilize AMV other than or in addition to an appraisal in a specific transaction that requires Congressional authorization, the Department shall expressly describe to the appropriate committees of Congress the AMV applied and, using the assistance of the ASD, explain how they differ from appraisal methods applied under UASFLA or USPAP.

(b) If the Department proposes to utilize AMV other than or in addition to an appraisal in a specific transaction that does not require Congressional authorization, the Department shall notify the appropriate committees of Congress and the Office of the Inspector General prior to the completion of the transaction and, upon Congressional direction, explain, using the assistance of the ASD, to the appropriate committees how the AMV differ from appraisal methods applied under UASFLA or USPAP.

(4) The Associate Director, ASD, has overall authority and responsibility to ensure the effective implementation of this policy, in coordination with the Office of the Special Trustee for American Indians (OST), as applicable, and the Office of Congressional and Legislative Affairs (OCL).

b. Appraisals Prepared for Third (i.e., non-Federal) Parties.

(1) Appraisals prepared for third (i.e., non-Federal) parties may assist in achieving mutually beneficial outcomes for the Department and the proponent. The Department of the Interior, however, is not obligated to review land transaction proposals supported by such appraisals that do not comport with its land management missions, priorities, and plans.

(2) Upon bureau request, the Department, acting through the ASD or the OST, as applicable, shall review a third party appraisal if: (a) the third party consults with ASD or OST prior to the initiation of the appraisal on the scope of work and the selection of the appraiser, and agree that ASD or OST, as applicable, is both the client for and an intended user of the appraisal; (b) a senior bureau or Departmental manager (i.e., Senior Executive Service level in the field or headquarters, as applicable) has transmitted the appraisal with a determination that the land transaction proposal supported by the appraisal comports with applicable missions, priorities, and plans; and (c) ASD or OST, as applicable, has determined that the appraisal was prepared by a certified appraiser and meets applicable appraisal standards.

(3) ASD or OST review of an appraisal does not create an expectation that such appraisal will be approved.

(4) In cases where an appraisal is reviewed by ASD or OST, a second appraisal may be required. If so, ASD or OST shall conduct or oversee that appraisal, which shall be performed in accordance with procedures determined by ASD or OST, as applicable.

(5) The Associate Director, ASD, has overall authority and responsibility to ensure the implementation of this policy in coordination with OST, as applicable, and the OCL.

c. Legislative Exchanges.

(1) All officials and employees of the Department shall adhere to 461 DM 1, which addresses requests for information, drafting, or other assistance regarding legislation from sources outside the Department, and specifically requires coordination with the Legislative Counsel in OCL.

(2) Similar coordination with the OCL shall occur on legislative exchange proposals initiated by any entity, official, or employee of the Department.

(3) The OCL shall determine the appropriate means for the review of each legislative exchange proposal, including the involvement of appropriate policy officials of other offices (e.g., the ASD or the OST as appropriate, and the Solicitor).

(4) Appropriate documentation shall support the key provisions of all legislative exchange proposals.

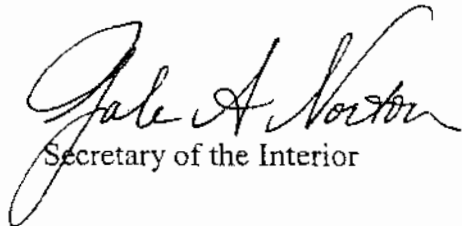
(5) All appraisals used in legislative exchanges shall conform to nationally recognized appraisal standards (i.e., the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, as applicable). When the Department proposes the application of alternative methods of valuation other than or in addition to an appraisal for a legislative exchange, it shall expressly describe the alternative methods of valuation and explain how they differ from methods utilized in an appraisal consistent with nationally recognized appraisal standards (i.e., the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, as applicable).

(6) The Director, OCL, has overall authority and responsibility to ensure the effective implementation of this policy, in coordination with the Associate Director, ASD, as applicable.

Sec. 5 Expiration Date. This Order is effective immediately. It will remain in effect until its provisions are converted to the Departmental Manual or until it is amended, superseded, or revoked, whichever occurs first. In the absence of any of the foregoing actions, the provisions of this Order will terminate and be considered obsolete on July 30, 2006.

Date:

DEC 30 2004


Secretary of the Interior